**STATE OF MINNESOTA**
**IN COURT OF APPEALS**
**A20-1244**

County of Dakota, ex rel., Michelle Marie Hinz, petitioner,
Respondent,

vs.

Bryan Arthur Rittweger,
Appellant.

**Filed August 30, 2021**
**Affirmed**
**Connolly, Judge**

Dakota County District Court
File No. 19WS-FA-19-909

Johanna Petronella Clyborne, Brekke, Clyborne & Ribich, LLC, Shakopee, Minnesota (for respondent Hinz)

Kathryn M. Keena, Acting Dakota County Attorney, Brita Ana Carnine, Assistant County Attorney, West St. Paul, Minnesota (for respondent Dakota County)

Ronald B. Sieloff, Sieloff and Associates, P.A., Eagan, Minnesota (for appellant)

Considered and decided by Connolly, Presiding Judge; Reyes, Judge; and Florey, Judge.

## NONPRECEDENTIAL OPINION

**CONNOLLY**, Judge

Appellant challenges the denial of his motion to reduce his child-support obligation, arguing that the district court abused its discretion by determining that there had not been a substantial change in his circumstances, erred by stating that it could not make a parenting-expense adjustment absent court-ordered parenting time, abused its discretion by awarding respondent $999 in conduct-based attorney fees, and erred by not providing an independent de novo review of the child support magistrate's (CSM's) 2020 order and by finding that appellant's failure to challenge the CSM's 2019 order earlier deprives him of the right to challenge it in 2020. Because we see no abuse of discretion and no error in the district court's determinations, we affirm.

## FACTS

Appellant Bryan Rittweger and respondent Michelle Hinz are the parents of J., born in October 2006, and R., born in April 2008. Following an October 2019 hearing, a CSM found that: (1) appellant's monthly income consisted of $2,557 from his Veterans' Administration (VA) disability benefit and $4,728 from his business, Sunlite Window and Door Inc.; (2) if appellant was no longer operating the business, that was his choice; (3) respondent's average monthly income from providing child care in her home was $3,472; (4) appellant owed respondent $31,540.70 for past basic child support;[1] and

[1] This was the amount remaining of $38,718 in arrears after appellant's payment of $7,177.30.

(5) appellant owed respondent Dakota County $1,280 for the children's past medical and dental expenses.[2]

The CSM issued its 2019 order requiring appellant to pay $1,434 for basic child support, $160 for medical support, and 70% of the children's unreimbursed medical and dental expenses. Because appellant had no court-ordered parenting time, the district court, in accord with Minn. Stat. § 518A.36, subd. 1(b) (2018), did not apply a parenting-expense adjustment. Appellant's motion for review of the CSM's order was denied, and the order was affirmed.

In April 2019, appellant's current spouse incorporated a business called Sunlite LLC. In January 2020, appellant dissolved Sunlite Window and Door Inc.

Appellant filed a motion to modify his basic child-support and his medical-support obligations in March 2020. Following a remote hearing, another CSM found that: (1) appellant's spouse's incorporation of Sunlite LLC and appellant's dissolution of Sunlite Window and Door Inc., were "a sham designed to create the illusion of [appellant's] reduced income," (2) no substantial change in appellant's circumstances had occurred; (3) appellant's monthly income now consisted of his increased VA benefit, $3,492, and the imputed average monthly income from his business, $4,728, a total of $8,220; and (4) respondent's monthly income was $3,472. In its 2020 order, the CSM denied appellant's motion to modify basic child support, granted his motion to modify medical support, credited $456 to his arrearage amount; and granted respondent's request for $999

[2] Appellant does not challenge the district court's decision as it pertains to Dakota County.

in conduct-based attorney fees.[3] After a remote hearing, the district court affirmed the CSM's 2020 order.

Appellant challenges the district court's decisions pertaining to the absence of a change in appellant's circumstances, the absence of a parenting-expense adjustment to his basic child-support obligation, respondent's award of conduct-based attorney fees, the review of the CSM's 2020 order, and appellant's failure to challenge the 2019 order in earlier proceedings.

## DECISION

### 1. Absence of a Substantial Change in Circumstances

On appeal from a CSM's ruling that has been affirmed by the district court, the standard of review is the same as would have been applied if the decision had been made by a district court in the first instance. *Ludwigson v. Ludwigson*, 642 N.W.2d 441, 445-46 (Minn. App. 2002). This court reviews the district court's ruling rather than the CSM's ruling. *Kilpatrick v. Kilpatrick*, 673 N.W.2d 528, 530 n.2 (Minn. App. 2004). Whether to modify child support is within the broad discretion of the district court, and that discretion is abused if the district court's decision is based on a misapplication of the law, is contrary to the facts, or is contrary to logic. *Shearer v. Shearer*, 891 N.W.2d 72, 77 (Minn. App. 2017).

[3] The Child Support Guidelines Worksheet attached to the CSM's 2020 order indicated that appellant's monthly basic child-support obligation would be $1,698, or $264 more than the 2019 obligation of $1,434 that he sought to reduce.

A child-support obligation may be modified if there has been a substantial change in one party's circumstances, such as a decrease in income. Minn. Stat. § 518A.39, subd. 2 (2018). In its 2020 order, the CSM found and the district court agreed that appellant's monthly income was $8,220, the sum of his current VA benefit of $3,492 and his average 2016-2018 monthly earnings from his business, $4,728. Appellant argues that his child-support obligation should be reduced to $674 because of a substantial change in his circumstances: i.e., he can no longer earn any income from his business because the VA has declared him to be 100% disabled and unable to work. Therefore, he asserts, the district court erred by finding that he had voluntarily chosen to cease operating the business and imputing income from the business to him.

But the VA clearly stated in a letter to appellant: "Are you being paid the 100 percent rate because you are unemployable due to your service-connected disabilities: NO." Thus, there was no error in finding that the VA had not made a finding of appellant's individual unemployability.

Nor was there an error in the imputation of income from appellant's business, Sunlite Window and Door Inc. The imputation of income was based on findings that:

> If [appellant] is in fact no longer operating his business, that appears to be a voluntary choice he has made. . . .[Appellant] indicates that his business became inactive in the spring of 2019 . . . and was dissolved on January 21, 2020. . . . [Appellant's] spouse on April 9, 2019, incorporated a business called Sunlite LLC. . . . [Appellant] himself made no explanation for the creation of Sunlite LLC by affidavit or testimony. . . . The explanation of [appellant's] counsel that Sunlite LLC was created [by appellant's spouse] in order to wind down the affairs of Sunlite Window and Door Inc. utterly

> lacks credibility.[4] . . . [T]he dissolution of Sunlite Window and Door Inc. . . . [and t]he subsequent incorporation of Sunlite LLC was a sham designed to create the illusion of reduced income.

Appellate courts defer to district-court credibility determinations. *See, e.g.*, *Sefkow v. Sefkow*, 427 N.W.2d 203, 210 (Minn. 1988). This court has no basis to overturn the determination that there was no credible explanation for the creation of Sunlite LLC by appellant's spouse prior to the dissolution of Sunlite Window and Door Inc. by appellant other than an attempt to show that appellant's income was reduced.

Appellant also argues that the CSM's October 2019 use of appellant's average monthly earnings from his business in 2016, 2017, and 2018 violates Minn. Stat. § 518A.32, subd. 2(1) (2018) (giving "the parent's probable earnings level based on employment potential, recent work history, and occupational qualifications" as one option for determining potential income) because it was not "recent work history." But in 2019, when the CSM made its findings, those three years were the most recent years from which the CSM could base its finding of an average monthly earning of $4,728. The CSM's 2020 order stated that appellant "continue[d] to have the ability to earn" that amount, and the district court affirmed that figure and thus adopted it. *See Kilpatrick*, 673 N.W.2d at 530 n.2 ("[T]o the extent the reviewer of the CSM's original decision affirms the CSM's original decision, that original decision becomes the decision of the reviewer.").

[4] We are unaware of any statutory requirement that a new corporation must be incorporated in order to wind down the affairs of an existing corporation.

Appellant also argues that basing appellant's gross monthly income on both his actual income, i.e., the VA disability payment, and his imputed income, i.e., the income from Sunlite Window and Door, Inc., violated Minn. Stat. § 518A.32, subd. 1 ("If a parent is voluntarily unemployed, underemployed, or employed on a less than full-time basis, or there is no direct evidence of any income, child support must be calculated based on a determination of potential income."). But appellant reads the word "only" into the statute after "based": based *only* on a determination of potential income. This court "cannot supply language that the legislature may have omitted or overlooked." *State v. Hulst*, 510 N.W.2d 262, 264 (Minn. App. 1984). Appellant provides no support for his view that actual income and potential income are mutually exclusive.

Moreover, Minn. Stat. § 518A.29(a) (2018) explicitly contradicts appellant's view: "[G]ross income includes any form of periodic payment to an individual, including . . . disability payments . . . *and* potential income under section 518A.29 . . . ." (emphasis added). There is no error in considering both appellant's actual income from his disability payment and his potential income from his business in calculating his gross income for child support purposes.

There was no misapplication of the law in not finding a change in circumstances because appellant had dissolved his business.

**2. Absence of a Parenting-Expense Adjustment**

Interpreting the parenting-expense-adjustment statute is a legal issue reviewed de novo. *Hesse v. Hesse*, 778 N.W.2d 98, 102 (Minn. App. 2009).

Appellant seeks a parenting-expense adjustment to his child-support obligation, but the parties have no court-ordered parenting times. "If there is not a court order awarding parenting time, the court shall determine the child support award without consideration of the parenting expense adjustment." Minn. Stat. § 518A.36. subd. 1(b) (2018); *see also Hesse*, 778 N.W.2d at 103 (noting that parenting-time expense adjustment calculations must be based on the scheduled amount of parenting time). Based on this statute, the CSM declined to make a parenting-time adjustment to appellant's current child-support obligation or to his arrears.

Appellant relies on Minn. Stat. § 518A.36, subd. 3 (2018): "If the parenting time is equal and the parental incomes for determining child support of the parents also are equal, no basic support shall be paid unless the court determines that the expenses for the child are not equally shared." In the affidavit supporting his motion to modify child support, appellant said "Since our separation, [respondent] and I have always exercised an equal parenting time schedule until recently. . . . It was my understanding that our arrangement meant that we had 50/50 parenting time, and that should be reflected in the arrears and the [child-support] order." But, even if appellant's claim of equal parenting time were true, the second requirement of Minn. Stat. § 518A.36, subd. 3, would not be met: respondent's monthly income was found to be $3,472, while appellant's was found to be $8,220. Unless appellant's monthly income is restricted to his VA disability payment of $3,492 (as he claims it should be), the parties' incomes are far from equal, and the statute does not apply.

Appellant also seeks a parenting-expense adjustment to his arrears. But "[a] modification of support . . . may be made retroactive only with respect to any period during

which the petitioning party has pending a motion for modification but only from the date of notice of service of the motion on the responding party." Minn. Stat. § 518A.39, subd. 2(f) (2018). His arrearage of $31,540.70 has not accrued since his March 2020 motion.

Appellant relies on Minn. Stat. § 518A.38, subd. 3 (2018), providing that "[t]he [c]ourt may conclude that an obligor has satisfied a child support obligation by providing a home, care, and support for the child while the child is living with the obligor, if the court finds that the child was integrated into the family of the obligor with the consent of the obligee . . . ." But appellant provided no evidence of respondent's consent to the 50/50 parenting-time arrangement he alleged. The district court here had no basis to make such a conclusion and therefore did not find that appellant had satisfied his child-support obligation.

Appellant argues further that the CSM and the district court erred in applying the statutory requirement of a parenting-time order to make a parenting-time adjustment (Minn. Stat. § 518A.36, subd. 1(b)) and the statutory restriction on retroactive modification of child support (Minn. Stat. § 518A.39, subd. 2(f)) because "mechanically applied child support statutes . . . do not always lead to a just and equitable result" and the district court "refused to apply any equitable considerations to any of the issues in the case." *See LaFreniere-Nietz v. Nietz*, 547 N.W.2d 895, 898 (Minn. App. 1996) ("[A] court may supplement statutes with equitable principles."). But, contrary to appellant's statement that "[the CSM] erred by not . . . applying equitable principles," the fact that a court has discretion to supplement statutes with equitable principles does not mean a court errs by

invoking an equitable consideration and ignoring an unambiguous statutory directive. There was no error in the decision not to invoke a parenting-time directive.

**3. Attorney fees**

Conduct-based attorney fee awards "are discretionary with the district court." *Szarzynski v. Szarzynski*, 732 N.W.2d 285, 295 (Minn. App. 2007).

The CSM granted respondent's request for $999 in conduct-based attorney fees against appellant, finding that appellant had "unreasonably increased [respondent's] attorney fees and added to the length of this proceeding" by: (1) insisting that a parenting-expense adjustment be applied although there is no parenting order; (2) insisting on a retroactive modification of child support by decreasing his arrears; (3) failing "to pay voluntarily one penny in child support due [respondent] since October 2019"; (4) telling respondent's attorney that appellant had "made it clear . . . that he is not going to stop until the arrears and current support obligations are corrected," although appellant claimed to be willing to negotiate; and (5) violating the parenting consultant agreement not to bring motions until a parenting-time schedule was established.

Appellant addresses only the first of these findings. He argues that the CSM erred "by using [its] erroneous and constricted view of the law as a weapon against [a]ppellant to award [r]espondent attorney fees" and not applying Minn. Stat. § 518A.36, subd. 3 (stating that, when the parties have equal parenting time and equal incomes, no child support shall be paid) to conclude that no court-ordered parenting time was required to make a parenting-expense adjustment to appellant's child-support obligation. This argument fails in view of our affirmance of the determination that the parties did not have

equal incomes because there was no substantial change in circumstances and income was imputed to appellant.

**4. De Novo Review of CSM's Order**

Appellant argues that the district court failed to provide a de novo review of the CSM's 2020 order. On an appeal from a district court's review of a CSM's order, this court

> will reverse a trial court's order regarding child support modification only if we are convinced that the court abused its broad discretion and reached a conclusion that is against the logic and the facts on the record. The standard for reviewing a child support magistrate's decision is the same as it would be if the trial court had made the decision. Findings on net income for child support purposes will be affirmed on appeal if those findings have a reasonable basis in fact and are not clearly erroneous.

*Ludwigson*, 642 N.W.2d at 445-46 (citations omitted); *see also Putz v. Putz*, 645 N.W.2d 343, 348 (Minn. 2002) (where there had been no district court review of a CSM's order, the supreme court applied the abuse-of-discretion standard after noting that this court "applied the abuse of discretion standard and the parties agree that it is the appropriate standard of review").

The district court addressed each of the 21 findings to which appellant objected: findings 6, 13, 14, 25, 26, 28, 29, 30, 34, 35, 36, 37, 38, 45, 52, 60, 61, 62, 63, 64, and 65. The district court noted that: (1) finding 6 was a clerical error and should be amended; (2) findings 25 and 28 were supported by the record and appellant's motion for their review was withdrawn; (3) finding 13 was taken from the October 2019 order, which appellant had not challenged previously; and (4) finding 14 was also taken from the October 2019

order, appellant's motion for review of this order had been denied, and appellant had not challenged the denial. The district court also stated that findings 52, 60, 61, 62, 63, 64, and 65 were all supported by the record and addressed the remaining nine findings in more detail.

**Finding 26**

Finding 26 reads, "It is clear that the VA's use of the term 'disabilities' is highly technical and does not necessarily mean that the veteran cannot work." The district court relied on a letter to appellant from the VA informing him that his service-connected evaluation was 100% and saying, "Are you being paid at the 100 percent rate because you are unemployable due to your service-connected disabilities: NO." The document appellant provides in support of his assertion that he cannot work is not from the VA or from any medical professional; it is from the assistant director of a charity, the Veterans of Foreign Wars. The CSM's finding that the VA's use of the term "disabilities" does not mean that a veteran cannot work is supported by the record.

**Findings 29 and 30**

The district court again relies on the VA's letter stating that appellant was not receiving the 100% disability payment "because [he was] unemployable due to [his] service-connected disabilities" in addressing the CSM's finding 29 (that "[the VA] has not determined [appellant] to be unemployable") and finding 30 (that "[appellant] can work without affecting his veteran's benefits because there has been no determination of an award of 'individual unemployability'"). The district court further noted that appellant had not challenged the CSM's finding 21, which addressed "the distinction between [VA]

disability ratings; including 'Percentage Scale' and 'Individual Unemployability,'" and concluded that findings 29 and 30 were also supported by the record.

**Findings 34, 35, and 36**

The CSM found that appellant himself did not explain the creation of Sunlite LLC by affidavit or testimony (finding 34), that appellant's counsel's explanation that Sunlite LLC was created to "wind down" Sunlite Window and Door was not credible (finding 35), and that the dissolution of Sunlite Window and Door and the incorporation of Sunlite Inc. was "a sham designed to create the illusion of [appellant's] reduced income" (finding 37). The district court rejected appellant's arguments that he was not permitted to provide testimony on this point and that he received information on it "too late" because the record did not show that appellant requested to offer testimony or to have a continuance. The district court went on to find that (1) Sunlite LLC was formed by appellant's current spouse on April 9, 2019; (2) appellant began winding down Sunlite Window and Door on April 19, 2019 and said he had not taken a check from it since April 12, 2019; and (3) appellant provided no documentary evidence to substantiate his statements that he received no income from the business after April 2019. The district court then concluded that findings 34, 35, and 36 were supported by the existing record.

**Finding 37**

The CSM found that appellant "continues to have the ability to earn $4,728.00 gross per month profit from operation of the [Sunlite Window and Door] business." The district court noted that this language was "imprecise" and should be amended "to reflect that appellant continues to have the ability to earn $4,728 per month in business income."

It noted further that appellant had the burden to prove by the preponderance of evidence the justification for modifying child support and that he failed to meet this burden by not providing any "bank records, up-do-date business financials, or tax records to support his claim" that his income from the business had changed. The district court also observed that the change in income would require a link between appellant's increased disability rating and his alleged decreased ability to earn and that neither appellant nor the VA had established such a link. Thus, these three findings were supported by the record.

**Finding 38**

This CSM finding, that appellant's gross monthly income is $8,220, resulted from adding his VA benefit of $3,492 to his imputed business income of $4,728, both of which are supported by the record, as discussed above.

**Finding 45**

This CSM finding, that respondent had two nonjoint children residing with her, was accurate when it was made in 2019, although the older child had since been emancipated. But the finding was not unsupported by the record.

Appellant's argument that the district court failed to conduct an appropriate review of the CSM's order fails.

**5. Failure to challenge prior findings and orders**

The CSM's June 1, 2020, order said "[a]ll other support provisions of the prior order remain in full force and effect." Appellant argues that this language gave the district court "equitable jurisdiction to amend the [CSM's October 18, 2019] Judgment and Order and [its November 27, 2019] Order." But appellant offers no support for his view that this

language makes every provision of those orders "subject to . . . the application of equitable principles to the same extent as any of the [other] issues raised." Nor does appellant explain why Minn. R. Civ. App. P. 104.01, setting out the time limits for filing an appeal, would not apply to the CSM's earlier orders. Therefore these questions are not properly before us. *See Brodsky v. Brodsky*, 733 N.W.2d 471, 478 (Minn. App. 2007) (providing that appellate courts do not address issues that have not been adequately briefed).

The district court did not err in determining that appellant's challenges to parts of the 2019 orders were untimely and outside its authority.

The district court did not abuse its discretion in concluding that no substantial change had occurred in the circumstances affecting appellant's child-support obligation or in imposing conduct-based attorney fees on appellant; nor did it err in concluding that no parenting-expense adjustment could be made to appellant's child-support obligation absent a court-ordered parenting time schedule, that the CSM's findings were supported by the record, and that appellant's failure to timely challenge the CSM's findings in prior orders precluded him from challenging them later.

**Affirmed.**